

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY-----X
GARY GREENBERG

Index No. _____

Plaintiff,

- against -

VERIFIED COMPLAINT

Samaritan Hospital of Troy, New York, Inc.

JURY TRIAL DEMANDEDDefendants.
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Plaintiff Gary Greenberg, by his attorneys Hach Rose Schirripa & Cheverie LLP, complaining of the Defendant Samaritan Hospital of Troy, New York, Inc. respectfully alleges, upon information and belief and states as follows:

NATURE OF THE ACTION

1. Gary Greenberg ("Plaintiff"), when he was a minor, was sexually abused by Louis Van Wie, a prolific convicted pedophile, who was employed by Cohoes Memorial Hospital as an orderly.

2. This is a revival action brought pursuant to the New York Child Victims Act (the "CVA"), CPLR § 214-g. Plaintiff fought side by side many other survivors of childhood sexual abuse and assault lobbying to have to have his day in Court and the ability have his voice heard as a result of the traumatic events of his childhood. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, each of Plaintiff's claims were time barred.

3. As a result of the passage of the CVA, Plaintiff – stands alongside so many others he fought for – brings suit to vindicate his rights and pursue restorative justice.

PARTIES

4. Plaintiff is an individual who resides in Greene County, New York.

5. Cohoes Memorial Hospital (“Cohoes Memorial”) was which was recognized for many years as one of the finest of its size in the area providing care and attending to the medical needs of those in and around Albany County.

6. Cohoes Memorial was operating a facility located at West Columbia Street in Cohoes, New York beginning in the early 1900s.

7. Louis Van Wie (“Van Wie” or “Plaintiff’s abuser”), now well into his seventies, was an employee of Cohoes Memorial Hospital in the late 1960s.

8. Van Wie was employed at Cohoes Memorial as an orderly.

9. In 1997, Van Wie was arrested and subsequently pleaded guilty to sexually abusing two young girls. At the time of his arrest, Van Wie confessed to sexually abusing more than 300 children over four decades.

10. Van Wie is still imprisoned as a result of his heinous crimes against children.

11. Upon information and belief, in 1986 Cohoes Memorial’s Board of Directors filed for reorganization under Chapter 11 of the Federal Bankruptcy Act to protect the hospital, which was \$1.5 million in debt. Indeed, Chapter 11 bankruptcies are utilized when a business wants to reorganize, and typically proposes a plan of reorganization to keep its business alive and pay creditors over time.

12. Upon information and belief, the decision to file bankruptcy was in continuance of Cohoes Memorial’s plan continue to operate under Samaritan Hospital of Troy, New York (“Samaritan Hospital” or “Defendant”).

13. On January 2, 1986, after 88 years of being in business, Cohoes Memorial stopped accepting patients and closed its emergency room.

14. In New York State, when a hospital closes, information is registered with the New York State Department of Health providing a last known contact for the storage and recovery of hospital medical records. Indeed, Cohoes Memorial's successor contact registered with the New York State Department of Health is Samaritan Hospital.

15. Samaritan Hospital is a non-profit domestic corporation organized pursuant to and in accordance with the laws of the State of New York with its principal place of business located at 2215 Burdett Avenue, Troy, New York, 12180.

16. Upon information and belief, Samaritan Hospital is the surviving entity for Cohoes Memorial and assumed its duties, obligations, and liabilities.

JURISDICTION AND VENUE

17. This Court has personal jurisdiction over the claims asserted herein pursuant to C.P.L.R. §§ 301 and 302, in that Defendant conducts business in the State of New York.

18. Further, this Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction. This court has jurisdiction to hear these claims as a result of the passage of the CVA passed in February 2019. As a result of the passage of this Act, the Statute of Limitations for Plaintiff's claims has been revived allowing him to file the instant Complaint.

19. Venue for this action is proper in the County of Albany pursuant to C.P.L.R. § 503 in that Defendant transacts business in this County and a substantial part of the events and omissions giving rise to the claim occurred in Albany County.

FACTS COMMON TO ALL CAUSES OF ACTION

20. In 1967, when Plaintiff was seven years old, Plaintiff visited Cohoes Memorial.
21. At the time of his visits to Cohoes Memorial, Plaintiff's father was an admitted patient.
22. Recovering from surgery, Plaintiff's father was at Cohoes Memorial for several days.
23. Each and every time Plaintiff visited his father in 1967, Plaintiff was by his mother.
24. Van Wie, a predator, saw Plaintiff and immediately targeted him.
25. Van Wie befriended Plaintiff's parents in an attempt to earn their trust.
26. On one of Plaintiff's visits to see his father at Cohoes Memorial, Van Wie asked Plaintiff if he wanted to see the X-ray room.
27. Van Wie asked Plaintiff's parents for permission to give him a tour of the X-Ray room.
28. Plaintiff's parents allowed Plaintiff to accompany Van Wie for a tour of the X-Ray room.
29. Instead, Van Wie took Plaintiff another part of the hospital.
30. Plaintiff was confused and terrified and Van Wie forcibly touched and grabbed at Plaintiff's genitals.
31. Plaintiff attempted to break free of Van Wie. Van Wie pressed on and attempted to pull Plaintiff's pants off.
32. Plaintiff escaped Van Wie's grip and ran to a nearby elevator shaft, where Van Wie grabbed Plaintiff and dangled him in the shaft threatening to drop Plaintiff if he did not acquiescent in allowing Van Wie to touch Plaintiff's penis.

33. Plaintiff broke free of Van Wie and ran to the roof. Van Wie followed in pursuit of Plaintiff and eventually caught up with Plaintiff.

34. Again, Van Wie attempted to touch Plaintiff's penis. Again, Plaintiff resisted and fought Van Wie off.

35. Van Wie dangled Plaintiff from the rooftop and threatened to drop Plaintiff off if he did not allow Van Wie to touch him. Plaintiff fought and struggled and eventually Van Wie gave up.

36. Van Wie threw some loose change at Plaintiff and told him to remain quiet about what had happened and not tell his parents or Van Wie would kill them.

37. At all times herein, Van Wie's actions violated the New York State Penal Code.

38. As a direct result of the Defendant's conduct described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION NEGLIGENCE

39. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "38" as if fully set forth herein.

40. In 1967, Cohoes Memorial owned, operated, managed, maintained, controlled, secured and supervised the premises and employees within the premises.

41. In 1967, Defendant Cohoes Memorial, as the owner, operator, supervisor and manager of the premises and the employees within the premises had a duty to protect the Plaintiff from injury while Plaintiff was lawfully within the premises.

42. In 1967, while lawfully upon the premises, Plaintiff was caused to be injured solely and wholly due to the negligence and carelessness of Cohoes Memorial.

43. That solely and wholly by reason of the foregoing, Plaintiff was injured.

44. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Cohoes Memorial in the ownership, operation, management, maintenance, control, security and supervision of the premises and the employees within the premises known as Cohoes Memorial Hospital.

45. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of Cohoes Memorial without any negligence on the part of the plaintiff contributing thereto.

46. Upon information and belief, after reorganization, Defendant Samaritan Hospital is the surviving entity for Cohoes Memorial and as such is liable for claims which could have been brought against Cohoes Memorial in 1967.

47. By reason of the foregoing, Defendant is are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

SECOND CAUSE OF ACTION
INADEQUATE SECURITY

48. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs "1" through "38" as if fully set forth herein.

49. That Cohoes Memorial negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises.

50. That Cohoes Memorial negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises and while defendant had knowledge of its employee Van Wie propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

51. That Cohoes Memorial negligently failed to safeguard Plaintiff, a child.

52. That Cohoes Memorial knew or should have known of its employee Van Wie's propensity for the conduct that caused Plaintiff's injuries and negligently failed to take reasonable measures to protect and provide security to the Plaintiff.

53. That as a result of the foregoing Plaintiff was seriously and permanently injured.

54. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Cohoes Memorial in the ownership, operation, management, maintenance, control, security and supervision of the premises and employees within the premises.

55. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of Cohoes Memorial, without any negligence on the part of the Plaintiff contributing thereto.

56. Upon information and belief, after reorganization, Defendant Samaritan Hospital is the surviving entity for Cohoes Memorial and as such is liable for claims which could have been brought against Cohoes Memorial in 1967.

57. By reason of the foregoing, Defendant is are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

THIRD CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs “1” through “38” as if fully set forth herein.

59. Cohoes Hospital engaged in reckless, extreme, and outrageous conduct by providing Van Wie with access to children, including Plaintiff, despite knowing that he would likely use his position to groom and sexually abuse them, including Plaintiff.

60. Cohoes Hospital’s misconduct was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

61. As a result of this reckless, extreme, and outrageous conduct, Van Wie gained access to Plaintiff and sexually abused him.

62. Cohoes Memorial knew that this this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Plaintiff did in fact suffer severe emotional and psychological distress and personal physical injury as a result, including severe mental anguish, humiliation and emotional physical distress.

63. Upon information and belief, after reorganization Defendant Samaritan Hospital is the surviving entity for Cohoes Memorial and as such is liable for claims which could have been brought against Cohoes Memorial in 1967.

64. By reason of the foregoing, Defendant is are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

FOURTH CAUSE OF ACTION
VICARIOUS LIABILITY IN RESPONDEAT SUPERIOR

65. Plaintiff repeats and re-alleges each and every allegation set forth in the paragraphs “1” through “38” as if fully set forth herein.

66. Cohoes Memorial was and is vicariously liable in *respondeat superior* to Plaintiff for the foregoing unlawful conduct in that said acts were reasonably foreseeable by Van Wie and within the general scope of his employment.

67. Cohoes Memorial was and is vicariously liable in respondent superior to Plaintiff for the foregoing unlawful conduct for given prior instances of similar conduct of Van Wie and other employees, agents, and/or servants, as well as Cohoes Memorial's failure to respond accordingly, such unlawful conduct was reasonably foreseeable, and within the general scope of Cohoes Memorial's business in that due to prior known instances of similar conduct on part Van Wie, the herein actions of same could have been reasonably foreseen by Cohoes Memorial; and, therefore Cohoes Memorial assumed a relationship requiring it be responsible for Plaintiff's safety and protection.

68. As a result of the foregoing the Plaintiff has been caused to suffer and sustain severe and potentially permanent personal injuries, including severe injury and potentially permanent injury to her emotional and psychological well-being.

69. Upon information and belief, after reorganization Defendant Samaritan Hospital is the surviving entity for Cohoes Memorial and as such is liable for claims which could have been brought against Cohoes Memorial in 1967.

70. By reason of the foregoing, Defendant is are liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

WHEREFORE, Plaintiff demands judgment against the Defendant on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be provide at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

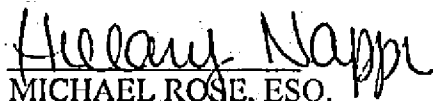
JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: New York, New York
September 18, 2019

Respectfully Submitted,

HACH ROSE SCHIRIPPA & CHEVERIE, LLP


MICHAEL ROSE, ESQ.
HILLARY M. NAPPI, ESQ.
112 Madison Avenue, 10th Floor
New York, New York 10016
212-213-8311

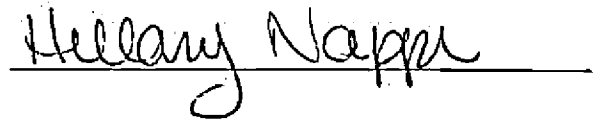
Attorneys for Plaintiff Gary Greenberg

ATTORNEY VERIFICATION

HILLARY M. NAPPPI, an attorney duly admitted and licensed to practice law in the courts of the State of New York, hereby affirms, pursuant to CPLR ¶ 2106, states under the penalty of perjury, as follows:

I am an associate at Hach Rose Schirripa & Cheverie LLP, attorneys for the Plaintiff herein, and as such, fully familiar with all the facts and circumstances heretofore stated herein by reason of a file maintained in our office located at 112 Madison Avenue, 10th floor, New York, New York 10016; I have read the foregoing Complaint, and the same is true to our own knowledge, except as to the matters therein stated to be alleged upon information and belief and, as to those matters, we believe them to be true; and that this verification is being made by us because the Plaintiff does not reside within New York County wherein our office is located.

Dated: September 18, 2019
New York, New York

A handwritten signature in cursive script, reading "Hillary Nappi", is written over a horizontal line.